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Attorneys for Defendant County of San Diego

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SAMANTHA LOPEZ, a Minor, by and  
through her Legal Custodian, LILIANA  
CORTEZ, FILADELFO LOPEZ, LAURA  
ALONZO LOPEZ, ANNA LOPEZ &  
JULIA LOPEZ, as surviving heirs of  
DAVID ARNULFO LOPEZ, deceased,

Plaintiffs,

v.

COUNTY OF SAN DIEGO, a municipal  
corporation, CITY OF VISTA, a  
municipal corporation & DOES 1-50,  
inclusive,

Defendants.

No. 07CV2028-JLS(WMc)

**NOTICE OF HEARING ON MOTION  
AND MOTION TO DISMISS  
PLAINTIFFS' ENTIRE COMPLAINT,  
OR TO STRIKE EMOTIONAL  
DISTRESS ALLEGATIONS AND  
REQUIRE JOINDER OF NECESSARY  
PARTIES, FILED ON BEHALF OF  
DEFENDANT COUNTY OF  
SAN DIEGO**

**[Fed. Rules Civ. P., Rules 12(b)(6) and (7),  
and 12(f)]**

Date: June 27, 2008

Time: 10:30 a.m.

Courtroom: 6

The Honorable Janis L. Sammartino

**No Oral Argument Unless Requested by  
the Court**

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 27, 2008, at 10:30 a.m., or as soon  
thereafter as the matter can be heard, in courtroom 6, before the Honorable Janis L.  
Sammartino, United States District Judge, located at 940 Front Street, San Diego,  
California, defendant County of San Diego will, and hereby does, move this Court,  
pursuant to Rules 12(b)(6), (7) and 12(f) of the Federal Rules of Civil Procedure, for an

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1 order dismissing the action with prejudice or, alternatively, to strike the emotional  
2 distress allegations in the complaint and/or require joinder of necessary parties.

3 This motion is made on the grounds that plaintiffs' complaint fails to state a claim  
4 upon which relief may be granted and was not drawn or filed in conformity with the  
5 Court's orders and contains redundant, immaterial, and impertinent matter, and on the  
6 further grounds that the complaint contains immaterial and impertinent allegations  
7 regarding emotional distress, and required persons are not included as parties and their  
8 absence would result in the failure of the Court to afford complete relief among existing  
9 parties and those persons may claim an interest relating to the subject matter of the  
10 action.

11 The motion is based on this notice of motion and motion, the accompanying  
12 memorandum of points and authorities, the complete files and records in this action, and  
13 upon such other and further evidence as may be presented at the hearing of this motion.

14 DATED: February 25, 2008 JOHN J. SANSONE, County Counsel

15 By s/DAVID G. AXTMANN, Senior Deputy  
16 Attorneys for Defendant County of San Diego  
E-Mail: [david.axtmann@sdcounty.ca.gov](mailto:david.axtmann@sdcounty.ca.gov)  
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### Declaration of Service

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 1600 Pacific Highway, Room 355, San Diego, California.

On February 26, 2008, I served the following documents: 1. **Notice of Hearing on Motion and Motion to Dismiss Plaintiff's Entire Complaint, or to Strike Emotional Distress Allegations and Require Joinder of Necessary Parties Filed on Behalf of the County of San Diego**; 2. **Memorandum of Points and Authorities in Support** in the following manner:

- ☐ By personally delivering copies to the person served.
- ☐ By placing a copy in a separate envelope, with postage fully prepaid, for each addressee named below and depositing each in the U. S. Mail at San Diego, California.
- ☐ By faxing a copy to the person served. The document was transmitted by facsimile transmission and the transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.
- ☒ By electronic filing, I served each of the above referenced documents by E-filing, in accordance with the rules governing the electronic filing of documents in the United States District Court for the Southern District of California, as to the following parties:

Victor Manuel Torres: E-Mail [lawforvatos@yahoo.com](mailto:lawforvatos@yahoo.com)

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on February 26, 2008, at San Diego, California.

By: s/DAVID G. AXTMANN

**PROOF OF SERVICE BY MAIL**

**[Samantha Lopez, etc., et al. v. County of San Diego, et al.; United States District Court No. 07cv2028-JLS(WMc)]**

I, R. LONERO declare that: I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California where the mailing occurs; and my business address is: 1600 Pacific Highway, Room 355, San Diego, California.

I further declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I served the following document(s): **1. Notice of Hearing on Motion and Motion to Dismiss Plaintiff's Entire Complaint, or to Strike Emotional Distress Allegations and Require Joinder of Necessary Parties Filed on Behalf of the County of San Diego; 2. Memorandum of Points and Authorities in Support** by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

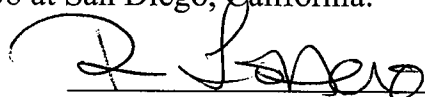
Ezekiel E. Cortez, Esq.  
1010 Second Avenue, Suite 1850  
San Diego, California 92101  
Phone: (619) 237-0309  
Fax: (619)

Co-Counsel for Plaintiffs

I then sealed each envelope and, with the postage thereon fully prepaid, I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2008 at San Diego, California.

  
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R. LONERO